

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **LSA Document #97-12**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 1999, through September 22, 1999, on IDEM's draft rule language. IDEM received comments from the following parties:

Eli Lilly and Company

(ELC)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The rule should specify more clearly how and to what extent information submitted in support of a confidentiality claim will be protected. The proposed rule is not clear whether a person must follow the procedures of the proposed confidentiality provisions for the submittal of confidential supporting information. In addition, the rule is not clear on how long confidential treatment of the supporting information will last. (ELC)

*Response:* Confidential supporting information will be given the same protection as information that is the subject of the claim. Confidential information submitted in support of a claim must follow the format for claiming information as confidential as specified in 326 IAC 17.1-4; see, specifically, 326 IAC 17.1-4-1(c). If that supporting information is also determined to be confidential it will be afforded confidential treatment in accordance with 326 IAC 17.1-4-1(e). Under the rule, the commissioner's determination on the claim of confidentiality also addresses the confidentiality of the supporting information. IDEM will clarify the proposed language to specify that supporting information may be claimed as confidential and determined to be confidential.

*Comment:* IDEM should delete the needlessly burdensome requirements of draft 326 IAC 17.1-4-1(d). Submission of additional information supporting a claim of confidentiality is not required by statute. Suggested language was provided. Additionally, alternative suggested language was provided in an attachment which provided for a narrative statement to be used in support of a claim. (ELC)

*Response:* IDEM has amended this language to require only a brief affirmation that a claim invokes a statutory allowance of confidentiality. However, in the case of trade secrets IDEM is requiring that the claimant make an affirmative showing of how the object of the claim meets the definition of trade secret at IC 24-2-3-2. Without a supporting statement, for instance, that a "trade secret" has in fact been protected from disclosure, IDEM cannot assume that information should be excepted from disclosure to the public. The commissioner cannot make a reasoned determination without information sufficient to support the claim.

*Comment:* Lilly recommends that the proposed language be amended to require the commissioner to notify a claimant of her intent to deny the claim and to provide an opportunity to submit additional information in support of the claim. Suggested language was provided. (ELC)

*Response:* IDEM will incorporate this procedure into proposed rule language. Persons will be notified of the commissioner's intent to deny a claim and allowed an opportunity to submit additional supporting information under 326 IAC 17.1-5-2.